

108TH CONGRESS
2D SESSION

S. 2931

To enable drivers to choose a more affordable form of auto insurance that also provides for more adequate and timely compensation for accident victims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2004

Mr. CORNYN (for himself, Mr. McCONNELL, and Mr. McCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To enable drivers to choose a more affordable form of auto insurance that also provides for more adequate and timely compensation for accident victims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Auto Choice Reform Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title and table of contents.

- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Auto choice insurance system.
- Sec. 5. Personal injury protection system.
- Sec. 6. Tort maintenance system.
- Sec. 7. Protection against insurance fraud.
- Sec. 8. Source of compensation in cases of accidental injury.
- Sec. 9. Preservation of State and private rights.
- Sec. 10. Applicability to States.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Auto insurance premiums are too high,
5 largely because the current auto liability insurance
6 system (referred to in this subsection as the
7 “present system”)—

8 (A) encourages costly fraudulent claims
9 and unnecessarily contentious behavior by both
10 claimants and defendants; and

11 (B) often requires expensive lawyers on
12 both sides of a dispute to settle claims.

13 (2) The adversarial tort system that is in effect
14 in 36 States poorly compensates the most needy in-
15 dividuals, in that the system—

16 (A) pays no liability benefits to more than
17 30 percent of all accident victims;

18 (B) takes too long to pay victims when it
19 does pay them;

1 (C)(i) pays victims with minor injuries an
2 average of two to three times the cost of their
3 medical bills and lost wages; but

4 (ii) pays victims with serious injuries an
5 average of less than 50 percent of those bills
6 and lost wages; and

7 (D) pays more for plaintiff and defense
8 lawyers combined than it pays for victims' med-
9 ical bills and lost wages.

10 (3) The chance of winning the lawsuit lottery in
11 the present system—

12 (A) results in the filing of billions of dol-
13 lars of fraudulent or otherwise unnecessary
14 auto insurance claims annually;

15 (B) generates billions of dollars in unnec-
16 essary health care costs for private, Federal,
17 and State health care programs;

18 (C) raises auto insurance premiums for all
19 drivers, including drivers operating business ve-
20 hicles; and

21 (D) makes auto insurance premiums
22 unaffordable for many low-income individuals.

23 (4) The present system harms cities by—

1 (A) encouraging the filing of frivolous and
2 inflated claims that cities pay at the expense of
3 all taxpayers; and

4 (B) contributing to the abandonment of
5 cities by taxpayers who can achieve substantial
6 reductions in their auto insurance premiums by
7 moving to the suburbs.

8 (5) The present system provides individuals lit-
9 tle incentive to purchase safer automobiles.

10 (6) All of the no-fault insurance reform laws
11 that exist in 12 States provide more timely and equi-
12 table compensation for medical bills and lost wages
13 to more accident victims.

14 (7) Some of those no-fault insurance reform
15 laws, however, have not been successful in control-
16 ling insurance premiums, in large part because oppo-
17 nents of such reform have weakened the laws by cre-
18 ating loopholes for unnecessary and costly lawsuits.

19 (8) The alternative form of insurance, personal
20 injury protection, that may be offered to drivers by
21 reason of this Act, gives drivers the ability to—

22 (A)(i) insure themselves in all accidents for
23 their own medical bills and lost wages; and

1 (ii) sue other drivers on the basis of fault
2 for any economic losses that are not covered by
3 their insurance; and

4 (B) forgo lawsuits against other drivers for
5 noneconomic damages on the basis of fault in
6 return for being free from lawsuits for non-
7 economic damages by other drivers.

8 (9) Personal injury protection, by reducing the
9 need for auto liability lawsuits and the incentives
10 they provide for fraudulent and otherwise question-
11 able claims, could—

12 (A) save drivers billions of dollars annu-
13 ally; and

14 (B) enable them to receive more adequate
15 and timely compensation when they are seri-
16 ously injured.

17 (10) Personal injury protection would benefit
18 society by—

19 (A) increasing respect for the law by elimi-
20 nating the incentives of the adversarial present
21 system for fraudulent claims and unnecessarily
22 contentious behavior by both claimants and de-
23 fendants;

24 (B) saving precious health care resources;

1 (C) making it more affordable for low-in-
2 come individuals to operate an automobile to
3 get to better paying jobs;

4 (D) reducing the incentives for individuals
5 to abandon cities, by providing greater savings
6 for drivers who reside in cities;

7 (E) freeing city taxpayers' dollars for re-
8 ductions in taxes or expanded city programs by
9 reducing the amount of frivolous and unneces-
10 sary lawsuits against cities;

11 (F) encouraging drivers to own safer auto-
12 mobiles by giving insurers the opportunity to
13 reduce premiums for the owners of safe auto-
14 mobiles; and

15 (G) helping to free up court dockets that
16 are currently overburdened with personal injury
17 lawsuits fueled by the incentives for lawsuits
18 under the present system.

19 (11) A new auto insurance system that allows
20 drivers to select the form of auto insurance that best
21 meets their needs, by choosing between—

22 (A) a modified version of the present sys-
23 tem, or

24 (B) the personal injury protection system
25 described in paragraph (9),

1 would enable drivers to reduce the cost of auto in-
2 surance, increase the amount of average compensa-
3 tion in the event of a serious accident, and enhance
4 individual freedom.

5 (12) The Federal Government should encourage
6 consumer choice, but not exercise regulatory author-
7 ity over the business of auto insurance, including
8 rates and insurer solvency, as that authority is ap-
9 propriately exercised by the States.

10 (13)(A) During the period beginning July 1,
11 1956, and ending September 30, 2002, the Federal
12 Government spent more than \$887,000,000,000, ad-
13 justed for inflation, to facilitate highway construc-
14 tion in the United States.

15 (B) During the period beginning January 1,
16 1967, and ending December 31, 2001, more than
17 1,200,000 people were killed in motor vehicles acci-
18 dents on highways constructed with Federal funds.

19 (14) The auto insurers who operate in inter-
20 state commerce pay more than 73 percent of the
21 compensation paid to accident victims.

22 (15) Through programs such as medicare, med-
23 icaid, and social security, the Federal Government
24 pays a significant amount of the costs for compen-
25 sating motor vehicle accident victims.

1 (16) It is necessary and proper for the Con-
2 gress, in the exercise of its authority to establish
3 post roads and regulate commerce under section 8 of
4 article I of the Constitution, to provide drivers
5 throughout the United States with an alternative to
6 address the problems of the adversarial present sys-
7 tem and the inadequate no-fault insurance reforms.

8 (b) PURPOSES.—The purposes of this Act are as fol-
9 lows:

10 (1) To enable consumers of auto insurance to
11 choose between two insurance systems, which are—

12 (A) a tort maintenance system based on
13 applicable State law that provides for substan-
14 tially similar insurance premiums and com-
15 pensation for injuries as compared to the auto
16 insurance system in existence in that State on
17 the date of enactment of this Act; and

18 (B) a personal injury protection system
19 that compensates accident victims directly for
20 their medical bills and lost wages with substan-
21 tially less need to pursue lawsuits and provides
22 the opportunity for—

23 (i) substantial reductions in auto in-
24 surance premiums;

1 (ii) more comprehensive recovery of
 2 medical bills and lost wages in a shorter
 3 period of time; and

4 (iii) the right to sue negligent drivers
 5 for any uncompensated medical bills or lost
 6 wages.

7 (2) To preserve the rights of States to regulate
 8 the business of auto insurance.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) ACCIDENT.—The term “accident” means an
 12 unforeseen or unplanned event that—

13 (A) causes injury; and

14 (B) arises from the operation, mainte-
 15 nance, or use of a motor vehicle.

16 (2) ADD-ON LAW.—The term “add-on law”
 17 means a State law that provides that persons in-
 18 jured in motor vehicle accidents—

19 (A) are compensated without regard to
 20 fault for economic loss; and

21 (B) have the right to claim without any
 22 limitation for noneconomic loss based on fault.

23 (3) COLLATERAL SOURCE.—The term “collat-
 24 eral source” means a person, other than a tortfeasor
 25 or a motor vehicle insurer, that has a legal obliga-

1 tion to pay compensation for economic loss to a per-
2 son who is injured in an accident.

3 (4) COMMON CARRIER.—The term “common
4 carrier” means a motorized vehicle of any kind, li-
5 censed for highway use, that is—

6 (A) required to be registered under the
7 provisions of applicable State law relating to
8 motor vehicles; and

9 (B) used in the business of transporting
10 persons.

11 (5) ECONOMIC LOSS.—The term “economic
12 loss” means objectively verifiable pecuniary loss
13 caused by an accident for—

14 (A) reasonable and necessary medical and
15 rehabilitation expenses;

16 (B) loss of earnings;

17 (C) funeral costs; and

18 (D) replacement services loss.

19 (6) ELECTRONIC SIGNATURE.—The term “elec-
20 tronic signature” means any letters, characters, or
21 symbols executed or adopted by a party with an in-
22 tent to authenticate a writing that are—

23 (A) manifested by—

24 (i) electronic means; or

25 (ii) any other similar means; and

1 (B) logically associated with that writing.

2 (7) FINANCIAL RESPONSIBILITY LAW.—The
3 term “financial responsibility law” means a law (in-
4 cluding a law requiring compulsory coverage) penal-
5 izing motorists for failing to carry defined limits of
6 tort liability insurance covering motor vehicle acci-
7 dents.

8 (8) FIRST PARTY BENEFITS.—The term “first
9 party benefits” means benefits paid or payable by an
10 insurer to an insured of that insurer under a per-
11 sonal injury protection policy or a tort maintenance
12 coverage policy applicable to that insured.

13 (9) INJURY.—The term “injury” means bodily
14 injury, sickness, disease, or death.

15 (10) INSURER.—The term “insurer” means any
16 person who is engaged in the business of issuing or
17 delivering motor vehicle insurance policies (including
18 an insurance agent, if appropriate) under applicable
19 State law.

20 (11) MOTOR CARRIER.—The term “motor car-
21 rier” means—

22 (A) a person who—

23 (i) transports by motor vehicle goods
24 for another person or entity for compensa-
25 tion; and

1 (ii) is liable for the operation of the
2 vehicle under part 387 of title 49, Code of
3 Federal Regulations; or

4 (B) a person who transports such person's
5 goods by a motor vehicle that such person owns
6 or leases.

7 (12) MOTOR VEHICLE.—The term “motor vehi-
8 cle” means a vehicle with 4 or more wheels licensed
9 for highway use that is required to be registered
10 under the provisions of the applicable State financial
11 responsibility law relating to motor vehicles.

12 (13) NAMED INSURED.—The term “named in-
13 sured” means a person designated by name in a per-
14 sonal injury protection policy or tort maintenance
15 coverage policy as the insured.

16 (14) NO-FAULT MOTOR VEHICLE LAW.—The
17 term “no-fault motor vehicle law” means a State law
18 that provides that—

19 (A) persons injured in motor vehicle acci-
20 dents are paid compensation without regard to
21 fault for their economic loss that results from
22 injury; and

23 (B) in return for the payment referred to
24 in subparagraph (A), claims based on fault, in-

1 including claims for noneconomic loss, are limited
2 to a defined extent.

3 (15) NONECONOMIC LOSS.—The term “non-
4 economic loss” means subjective, nonmonetary losses
5 recognized under applicable State tort law.

6 (16) OCCUPY.—The term “occupy” means, with
7 respect to the operation, maintenance, or use of a
8 motor vehicle, to be in or on a motor vehicle or to
9 be engaged in the immediate act of entering into or
10 alighting from a motor vehicle.

11 (17) OPERATION, MAINTENANCE, OR USE OF A
12 MOTOR VEHICLE.—(A) The term “operation, main-
13 tenance, or use of a motor vehicle” means any activ-
14 ity involving or related to the transportation by a
15 motor vehicle.

16 (B) Such term includes occupying or being en-
17 gaged in the immediate act of entering into or
18 alighting from a motor vehicle before or after its use
19 for transportation.

20 (C) Such term does not include—

21 (i) conduct within the course of a business
22 of manufacturing, sale, repairing, servicing, or
23 otherwise maintaining motor vehicles, unless
24 the conduct occurs outside the scope of the
25 business activity; or

1 (ii) conduct within the course of loading or
2 unloading a motor vehicle, unless the conduct
3 occurs while occupying or being engaged in the
4 immediate act of entering into or alighting from
5 a motor vehicle before or after its use for trans-
6 portation.

7 (18) PERSON.—The term “person” means any
8 individual, corporation, company, association, firm,
9 partnership, society, joint stock company, or any
10 other entity, including any governmental entity.

11 (19) PERSONAL INJURY PROTECTION.—The
12 term “personal injury protection” means insurance
13 that provides for—

14 (A) benefits to a personal injury protection
15 insured for economic loss without regard to
16 fault for injury resulting from a motor vehicle
17 accident in accordance with this Act;

18 (B) a waiver of tort claims against other
19 drivers, other than—

20 (i) claims for uncompensated eco-
21 nomic loss based on fault; and

22 (ii) other tort claims exempted from
23 such a waiver under this Act;

24 (C) coverage against claims for uncompen-
25 sated economic losses based on fault by another

1 party that is entitled to recover those losses
2 under this Act; and

3 (D) coverage against claims for economic
4 or noneconomic losses of a third party with re-
5 spect to which the recovery of those losses is
6 not covered under this Act.

7 (20) PERSONAL INJURY PROTECTION IN-
8 SURED.—The term “personal injury protection in-
9 sured” means a person covered by the form of insur-
10 ance described in section 5.

11 (21) PERSONAL INJURY PROTECTION IN-
12 SURER.—The term “personal injury protection in-
13 surer” means an insurer who is engaged in the busi-
14 ness of providing personal injury protection.

15 (22) PERSONAL INJURY PROTECTION SYS-
16 TEM.—The term “personal injury protection sys-
17 tem” means the insurance system described in sec-
18 tion 5.

19 (23) REPLACEMENT SERVICES LOSS.—The
20 term “replacement services loss” means expenses
21 reasonably incurred in obtaining ordinary and nec-
22 essary services from other persons who are not mem-
23 bers of the injured person’s household, in lieu of the
24 services the injured person would have performed for
25 the benefit of the household.

1 (24) RESIDENT RELATIVE OR DEPENDENT.—

2 (A) The term “resident relative or dependent”
3 means a person—

4 (i) who is related to the named insured by
5 blood, marriage, adoption, or otherwise (includ-
6 ing a dependent receiving financial services or
7 support from such insured); and

8 (ii) who—

9 (I) resides in the same household as
10 the named insured at the time of the acci-
11 dent; or

12 (II) usually makes a home in the
13 same family unit as the named insured,
14 even though that person may temporarily
15 live elsewhere.

16 (B) Such term does not include any person who
17 maintains or is required to maintain insurance for a
18 motor vehicle that such person owns.

19 (25) STATE.—The term “State” includes the
20 District of Columbia, the Commonwealth of Puerto
21 Rico, Guam, the United States Virgin Islands,
22 American Samoa, the Commonwealth of the North-
23 ern Mariana Islands, the Trust Territories of the
24 Pacific Islands, and any other territory or possession
25 of the United States.

1 (26) TORT LIABILITY.—The term “tort liability”
2 means the legal obligation to pay damages for
3 an injury in an accident adjudged to have been
4 caused by a tortfeasor, under applicable State law.

5 (27) TORT LIABILITY INSURANCE.—The term
6 “tort liability insurance” means a contract of insurance
7 under which an insurer agrees to pay, on behalf
8 of an insured, damages that the insured is obligated
9 to pay to a third person because of the liability of
10 the insured to that person.

11 (28) TORT MAINTENANCE COVERAGE.—The
12 term “tort maintenance coverage” means insurance
13 coverage under which a tort maintenance insured, if
14 involved in an accident with a personal injury protection
15 insured, may recover first party benefits for
16 economic and noneconomic losses from the insurer of
17 that insured, based on fault under applicable State
18 law.

19 (29) TORT MAINTENANCE INSURED.—The term
20 “tort maintenance insured” means a person covered
21 by the form of insurance described in section 6.

22 (30) TORT MAINTENANCE SYSTEM.—The term
23 “tort maintenance system” means an insurance system
24 described in section 6.

1 (31) UNCOMPENSATED ECONOMIC LOSS.—(A)

2 The term “uncompensated economic loss” means
3 any objectively verifiable pecuniary loss payable
4 based on fault under applicable State tort law, ex-
5 cept for any such loss that is determined by a court
6 of competent jurisdiction to be, in whole or in part,
7 a product of fraudulent activity by the person mak-
8 ing the claim.

9 (B) Such term includes a reasonable attorney’s
10 fee calculated on the basis of the time actually ex-
11 pended and the value of the attorney’s efforts as re-
12 flected in payment to the attorney’s client. However,
13 such term does not include attorney’s fees when the
14 uncompensated economic loss is attributable only to
15 a deductible for coverage specified in subparagraph
16 (C)(i). The amount of a reasonable attorney’s fee
17 under this subparagraph shall not exceed the greater
18 of the amount recovered or \$1,000.

19 (C) Subject to section 8(k)(2), such term does
20 not include amounts paid or payable under—

21 (i) personal injury protection;

22 (ii) tort maintenance coverage;

23 (iii) no-fault or add-on motor vehicle insur-
24 ance;

1 (iv) Federal, State, or private disability or
2 sickness programs;

3 (v) Federal, State, or private health insur-
4 ance programs;

5 (vi) employer wage continuation programs;
6 or

7 (vii) workers' compensation or similar oc-
8 cupational compensation laws.

9 (32) UNINSURED MOTORIST.—The term “unin-
10 sured motorist” means the owner of a motor vehicle,
11 including the resident relatives or dependents of the
12 owner, who is uninsured under either the personal
13 injury protection system described in section 5 or
14 the tort maintenance system described in section
15 6—

16 (A) at the limits prescribed by the applica-
17 ble State financial responsibility law; or

18 (B) an amount prescribed under section
19 5(a)(1).

20 **SEC. 4. AUTO CHOICE INSURANCE SYSTEM.**

21 (a) OPERATION OF THE RIGHT TO CHOOSE.—

22 (1) IN GENERAL.—Under this Act, an insurer
23 may offer a choice between—

24 (A) the personal injury protection system
25 described in section 5; and

1 (B) the tort maintenance system described
2 in section 6.

3 (2) ELECTION BY SELF-INSURED PERSONS.—A
4 self-insured person, as determined under an applica-
5 ble State law, may elect coverage under paragraph
6 (1) by filing a notice with the appropriate State or
7 Federal agency.

8 (3) EFFECT OF ELECTION BY ELECTRONIC
9 MEANS.—For purposes of making an election of an
10 insurance system under this subsection, unless pro-
11 hibited by applicable State law, an electronic signa-
12 ture shall have the same force and effect as a hand-
13 written signature.

14 (b) EFFECT OF CHOICE ON RESIDENT RELATIVES
15 OR DEPENDENTS.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), a person who chooses either the personal
18 injury protection system or the tort maintenance
19 system also binds the resident relatives or depend-
20 ents of that person.

21 (2) EXCEPTION.—An adult resident relative or
22 dependent of a person described in paragraph (1)
23 may select the form of insurance that such person
24 does not select if the adult resident relative or de-

1 pendent makes that selection expressly in writing to
2 the insurer.

3 (3) TERMS AND CONDITIONS.—Insurers may
4 specify reasonable terms and conditions governing
5 the commencement, duration, and application of the
6 chosen coverage, depending on the number of motor
7 vehicles and owners of such vehicles in a household.

8 (c) UNIFORMITY RULES.—

9 (1) IN GENERAL.—Notwithstanding subsection
10 (b)(2) and in order to minimize conflict between the
11 insurance options, an insurer may maintain and
12 apply underwriting rules that encourage uniformity
13 in the provision of insurance benefits within a house-
14 hold.

15 (2) UNIFORMITY IN INSURANCE IN EMPLOY-
16 MENT.—Except as provided in paragraph (6), an
17 employer that elects an insurance option described in
18 subparagraph (A) or (B) of subsection (a)(1) binds
19 the employees of that employer for purposes of cov-
20 erage of that employee in the course of employment
21 by that employer.

22 (3) UNIFORMITY IN INSURANCE FOR MOTOR
23 CARRIERS.—Except as provided in paragraph (6), a
24 motor carrier that elects an insurance option de-
25 scribed in subparagraph (A) or (B) of subsection

1 (a)(1) binds any owner, operator, or occupant of a
2 motor vehicle operated by that motor carrier.

3 (4) UNIFORMITY IN INSURANCE FOR COMMON
4 CARRIERS.—Except as provided in paragraph (6), an
5 owner of a common carrier that elects an insurance
6 option described in subparagraph (A) or (B) of sub-
7 section (a)(1) binds the owner and any operator or
8 occupant of that common carrier.

9 (5) UNIFORMITY IN INSURANCE FOR MOTOR
10 VEHICLE RENTALS.—

11 (A) IN GENERAL.—Except as provided in
12 subparagraph (B), a person who is engaged in
13 the business of renting motor vehicles and who
14 elects an insurance option described in subpara-
15 graph (A) or (B) of subsection (a)(1) binds any
16 operator or occupant of the rented motor vehi-
17 cle with respect to the operation of that vehicle.
18 Whether such insurance under such an option
19 shall be in excess of, or primary to, any insur-
20 ance elected pursuant to subparagraph (A) or
21 (B) of subsection (a)(1) by a customer who
22 rents a motor vehicle shall be determined pur-
23 suant to applicable State law.

1 (B) EXCEPTION.—Subparagraph (A) shall
2 not apply if a customer who rents a motor vehi-
3 cle—

4 (i) specifically elects to obtain cov-
5 erage within the rental agreement other
6 than the coverage elected by the person en-
7 gaged in the business of renting the motor
8 vehicle; and

9 (ii) pays a separate charge, if re-
10 quired, for that optional coverage.

11 (6) RIGHT OF EMPLOYEES, OPERATORS, AND
12 CERTAIN OCCUPANTS TO PURCHASE ADDITIONAL
13 COVERAGE.—

14 (A) EMPLOYEES.—An employee under
15 paragraph (2) may elect to purchase separate
16 personal injury protection or tort maintenance
17 coverage in excess of the insurance provided by
18 the employer in the scope of the employment of
19 that employee.

20 (B) OPERATORS AND OCCUPANTS OF
21 MOTOR CARRIERS.—An operator or occupant of
22 a motor carrier under paragraph (3) may elect
23 to purchase separate personal injury protection
24 or tort maintenance coverage in excess of the
25 insurance provided to that operator or occupant

1 by the motor carrier as an operator or occupant
2 of that motor carrier.

3 (C) OPERATORS AND OCCUPANTS OF COM-
4 MON CARRIERS.—An operator or occupant of a
5 common carrier under paragraph (4) may elect
6 to purchase separate personal injury protection
7 or tort maintenance coverage in excess of the
8 insurance provided to that operator or occupant
9 by the owner of the common carrier as an oper-
10 ator or occupant of the common carrier.

11 (D) EFFECT OF ELECTION.—The election
12 by an employee, operator, or occupant to pur-
13 chase insurance coverage under this paragraph
14 shall not affect the liability of an employer,
15 motor carrier, or common carrier.

16 (d) FAILURE TO ELECT TYPE OF INSURANCE.—

17 (1) IN GENERAL.—Except as provided in sub-
18 section (b)(1), any person who fails to elect a type
19 of insurance under subsection (a)(1) shall be deemed
20 to have elected insurance under the tort mainte-
21 nance system in effect in the State of that person's
22 residence.

23 (2) RULE OF CONSTRUCTION.—This subsection
24 shall not be construed to prevent a State from en-
25 acting a law that deems a person who fails to elect

1 a type of insurance under this section to have elect-
2 ed insurance under the personal injury protection
3 system.

4 (e) CONSUMER INFORMATION PROGRAM.—

5 (1) STATE PROGRAM.—The State official
6 charged with jurisdiction over insurance rates for
7 motor vehicles may establish and maintain a pro-
8 gram designed to ensure that consumers are ade-
9 quately informed concerning—

10 (A) the comparative cost of insurance
11 under the personal injury protection system and
12 the tort maintenance system; and

13 (B) the benefits, rights, and obligations of
14 insurers and insureds under each such system.

15 (2) INSURER PROGRAM.—An insurer that offers
16 a choice of insurance systems under subsection
17 (a)(1) shall provide to each consumer, before that
18 consumer chooses motor vehicle insurance, written
19 consumer information to ensure that consumers are
20 adequately informed about—

21 (A) the comparative cost of insurance
22 under the personal injury protection system and
23 the tort maintenance system; and

24 (B) the benefits, rights, and obligations of
25 insurers and insureds under each system.

1 (3) ADEQUATE NOTICE.—If an insurer files
2 consumer information forms under paragraph (2)
3 with the State official charged with jurisdiction over
4 insurance rates for motor vehicles and such forms
5 are not disapproved within a reasonable period of
6 time after that filing, such filing and use of the in-
7 formation in accordance with paragraph (2) shall be
8 presumed to be adequate notice.

9 (f) SUPERSEDING PROVISION.—Subject to section
10 10, this Act supersedes a State law to the extent that the
11 State law is otherwise inconsistent with the requirements
12 of this Act.

13 **SEC. 5. PERSONAL INJURY PROTECTION SYSTEM.**

14 (a) MINIMUM POLICY REQUIREMENTS.—In order to
15 constitute a personal injury protection policy covered by
16 this Act, a motor vehicle insurance policy issued by an in-
17 surer shall, at a minimum—

18 (1) for each accident, provide personal injury
19 protection benefits to each personal injury protection
20 insured in amounts equal to—

21 (A) the minimum per-person limits of li-
22 ability insurance for personal injury under the
23 relevant State financial responsibility law appli-
24 cable to private passenger vehicles; or

1 (B) in a State covered by a no-fault motor
2 vehicle law, the minimum level of insurance re-
3 quired for no-fault benefits;

4 (2) contain provisions for a waiver of tort
5 claims against drivers other than the insured, ex-
6 cept—

7 (A) claims for uncompensated economic
8 loss based on fault; or

9 (B) other tort claims exempted from such
10 a waiver under this Act;

11 (3) contain provisions for third party liability
12 coverage in amounts equal to the minimum limits re-
13 quired under applicable Federal or State financial
14 responsibility law for—

15 (A) property damage; and

16 (B) bodily injury to cover—

17 (i) uncompensated economic losses for
18 parties who are entitled to recover such
19 losses under this Act; and

20 (ii) economic and noneconomic losses
21 of third parties whose recovery is not af-
22 fected by this Act.

23 (b) PRIMACY OF PAYMENT.—

24 (1) IN GENERAL.—

1 (A) PERSONAL INJURY PROTECTION BENE-
2 FITS.—

3 (i) IN GENERAL.—Except as provided
4 in subparagraph (B), in any case in which
5 a personal injury protection insurer and a
6 collateral source are obligated to pay bene-
7 fits for the same economic loss under this
8 Act, the personal injury protection insurer
9 shall be liable for the primary payment of
10 benefits to cover that economic loss.

11 (ii) LIABILITY OF COLLATERAL
12 SOURCES.—A collateral source shall be lia-
13 ble for economic loss only to the extent
14 that the loss exceeds benefits paid or pay-
15 able by an insurer under an applicable per-
16 sonal injury protection insurance policy.

17 (B) EXCEPTION.—Personal injury protec-
18 tion benefits shall be reduced by an amount
19 equal to any benefits provided or required to be
20 provided under—

21 (i) an applicable Federal or State law
22 for workers' compensation;

23 (ii) any State-required nonoccupational
24 disability insurance; or

1 (iii) any occupational disability insur-
2 ance covering professional drivers of motor
3 vehicles who are independent contractors.

4 (2) REIMBURSEMENT OF PAYORS.—

5 (A) IN GENERAL.—A personal injury pro-
6 tection insurer may take appropriate measures
7 to ensure that any person otherwise eligible for
8 personal injury protection benefits who has
9 been paid or is being paid for losses payable
10 by personal injury protection from a source
11 other than the applicable personal injury pro-
12 tection insurer shall not receive multiple pay-
13 ment for those losses.

14 (B) ACCRUAL OF RIGHTS.—Any right to
15 payment for losses referred to in subparagraph
16 (A) from a personal injury protection insurer
17 accrues only to that payor. Payments by a
18 payor referred to in subparagraph (A) shall not
19 be counted against personal injury limits for
20 personal injury protection until such time as
21 the payor is reimbursed under this subpara-
22 graph.

23 (3) PROTECTION AGAINST DUPLICATION.—

24 Upon receipt of reasonable notice, a personal injury
25 protection insurer shall reimburse a collateral source

1 for payments made by that collateral source for eco-
2 nomic loss for injury resulting from a motor vehicle
3 accident, to the extent that the personal injury pro-
4 tection insurer is obligated to pay for that economic
5 loss.

6 (c) PROMPT AND PERIODIC PAYMENT.—

7 (1) IN GENERAL.—A personal injury protection
8 insurer may pay personal injury protection benefits
9 periodically as losses accrue.

10 (2) LATE PAYMENT.—Except as provided in
11 section 7, a personal injury protection insurer that
12 does not pay a claim for personal injury protection
13 benefits during the 30-day period beginning on the
14 date on which that insurer receives a submission of
15 reasonable proof of the loss for which those benefits
16 are payable, shall pay—

17 (A) the loss compounded at a rate of 12
18 percent per annum as liquidated damages dur-
19 ing the first 10 days after such 30-day period,
20 and 24 percent per annum as liquidated dam-
21 ages thereafter; and

22 (B) a reasonable attorney's fee calculated
23 on the basis of the time actually expended or
24 the value of the attorney's efforts as reflected
25 in payment to the attorney's client.

1 (3) ADMINISTRATION OF PERSONAL INJURY
2 PROTECTION BENEFITS.—To the extent consistent
3 with this Act, any applicable provision of a State no-
4 fault motor vehicle law or add-on law governing the
5 administration of payment of benefits without ref-
6 erence to fault shall apply to the payment of benefits
7 under personal injury protection under this sub-
8 section.

9 (d) AUTHORIZATIONS FOR DEDUCTIONS AND EXCLU-
10 SIONS.—

11 (1) IN GENERAL.—A personal injury protection
12 insurer may write personal injury protection—

13 (A)(i) without any deductible; or

14 (ii) subject to a reasonable deductible; and

15 (B) with an exclusion of coverage for first
16 party benefits to cover the losses of the per-
17 sonal injury protection insured caused by that
18 insured's—

19 (i) driving under the influence of alco-
20 hol or illegal drugs; or

21 (ii) driving while seeking to inten-
22 tionally injure another person.

23 (2) APPLICABILITY OF DEDUCTIBLES.—The
24 deductibles and exclusions described in paragraph
25 (1) shall apply only to—

1 (A) the person named in the applicable in-
2 surance policy; and

3 (B) the resident relatives or dependents of
4 the person described in subparagraph (A).

5 **SEC. 6. TORT MAINTENANCE SYSTEM.**

6 (a) **MINIMUM POLICY REQUIREMENTS.—**

7 (1) **IN GENERAL.—**The coverage for a person
8 who chooses insurance under section 4(a)(1)(B)
9 shall include—

10 (A) the type of motor vehicle insurance
11 that is otherwise required under applicable
12 State law; and

13 (B) tort maintenance coverage at a level
14 that is at least equivalent to the level of insur-
15 ance required under the applicable State finan-
16 cial responsibility law for bodily injury liability.

17 (2) **RESPONSIBILITY FOR PAYMENT UNDER**
18 **TORT MAINTENANCE COVERAGE.—**The responsibility
19 for payment for any claim under tort maintenance
20 coverage is assumed by the insurer of the tort main-
21 tenance insured to the extent of such coverage.

22 (b) **ADDITIONAL PAYMENTS FROM UNINSURED MO-**
23 **TORIST COVERAGE AND UNDERINSURED MOTORIST COV-**
24 **ERAGE.—**A tort maintenance insured who also purchases
25 an insurance policy that provides uninsured motorist cov-

1 erage or underinsured motorist coverage may recover
 2 under the terms of that policy for any economic or non-
 3 economic loss arising from an accident involving a per-
 4 sonal injury protection insured, in any case in which the
 5 amount of those economic or noneconomic losses exceed
 6 the aggregate amount recovered or recoverable from the—

7 (1) tort maintenance coverage of the tort main-
 8 tenance insured; and

9 (2) personal injury protection insured.

10 **SEC. 7. PROTECTION AGAINST INSURANCE FRAUD.**

11 (a) **TIMELY SUBMISSION OF CLAIMS FOR FIRST**
 12 **PARTY BENEFITS.—**

13 (1) **IN GENERAL.—**No insurer shall be obligated
 14 to pay first party benefits to a personal injury pro-
 15 tection insured for any economic loss that occurred
 16 more than 45 days prior to the submission of a
 17 claim for such loss.

18 (2) **TOLLING.—**The time for submission of a
 19 claim shall be tolled during any period during which
 20 the insured can show that—

21 (A) the insured was physically unable—

22 (i) to submit proof of the claim; or

23 (ii) to supply the identity of the in-
 24 surer to the provider of services; or

1 (B) the insured was unable to identify the
2 insurer despite good faith efforts to do so.

3 (b) LOSS OF FIRST PARTY BENEFITS.—

4 (1) IN GENERAL.—No insurer shall be obligated
5 to pay any first party benefits to a personal injury
6 protection insured for any economic loss that a court
7 of competent jurisdiction determines is, in whole or
8 in part, the product of fraudulent activity by the in-
9 sured with respect to an accident.

10 (2) ATTORNEY'S FEES.—An insurer that pre-
11 vails in a lawsuit against a personal injury protec-
12 tion insured to recover benefits that were the prod-
13 uct of fraudulent activity, as determined by a court
14 of competent jurisdiction, shall be entitled to a rea-
15 sonable attorney's fee from the insured.

16 (c) LOSS OF ENTITLEMENT TO PURCHASE INSUR-
17 ANCE.—An insurer may cancel, decline to renew, or refuse
18 to issue a personal injury protection policy to any person
19 who a court of competent jurisdiction has determined has
20 engaged in fraudulent activity with respect to an accident
21 during the previous three years.

22 **SEC. 8. SOURCE OF COMPENSATION IN CASES OF ACCI-**
23 **DENTAL INJURY.**

24 (a) ACCIDENTS BETWEEN PERSONS CHOOSING THE
25 TORT MAINTENANCE SYSTEM.—A tort maintenance in-

1 sured who is injured in an accident with another tort
2 maintenance insured shall be subject to applicable State
3 law for injury.

4 (b) ACCIDENTS BETWEEN PERSONS CHOOSING THE
5 PERSONAL INJURY PROTECTION SYSTEM.—

6 (1) RIGHT TO RECOVER ECONOMIC LOSS WITH-
7 OUT REGARD TO FAULT.—A personal injury protec-
8 tion insured who is injured in an accident with an-
9 other personal injury protection insured shall be en-
10 titled to recover first party benefits only for eco-
11 nomic loss, without regard to fault.

12 (2) RIGHT TO SUE FOR UNCOMPENSATED ECO-
13 NOMIC LOSS BASED ON FAULT.—A personal injury
14 protection insured who is involved in an accident
15 with another personal injury protection insured may
16 recover uncompensated economic loss (and not non-
17 economic loss) from that other insured, based on
18 fault.

19 (c) ACCIDENTS INVOLVING PERSONS CHOOSING THE
20 TORT MAINTENANCE SYSTEM AND THE PERSONAL IN-
21 JURY PROTECTION SYSTEM.—

22 (1) PERSONS CHOOSING THE TORT MAINTENANCE SYSTEM.—

23 (A) IN GENERAL.—A tort maintenance in-
24 sured who is involved in an accident with a per-
25

1 sonal injury protection insured shall be subject
2 to applicable State law for injury, except that,
3 based on fault, that person may—

4 (i) recover first party benefits for eco-
5 nomic and noneconomic losses under the
6 tort maintenance coverage of that insured;

7 (ii) upon submission of proof of insur-
8 ance, recover uncompensated economic loss
9 (and not noneconomic loss) from the per-
10 sonal injury protection insured; and

11 (iii) upon submission of proof of in-
12 surance, be liable to a personal injury pro-
13 tection insured for uncompensated eco-
14 nomic loss (and not for noneconomic loss).

15 (B) ALLOCATION OF RECOVERY.—In de-
16 termining the extent of recovery of a tort main-
17 tenance insured from a personal injury protec-
18 tion insured under this subsection, the pay-
19 ments made to the tort maintenance insured
20 from tort maintenance coverage shall first be
21 allocable to economic loss, and any remainder
22 may be allocable to noneconomic loss.

23 (2) PERSONS CHOOSING THE PERSONAL INJURY
24 PROTECTION SYSTEM.—A personal injury protection

1 insured who is injured in an accident with a tort
2 maintenance insured—

3 (A) shall be entitled to recover first party
4 benefits for economic loss only, without regard
5 to fault; and

6 (B) may recover uncompensated economic
7 loss (and not noneconomic loss) from that other
8 insured, based on fault.

9 (d) ALLOCATION OF COMPARATIVE FAULT.—In any
10 case in which a claim is made under this Act for uncom-
11 pensated economic loss on the basis of comparative fault
12 under applicable State law, the recovery of damages shall
13 be based on the percentage of fault with respect to the
14 amount of uncompensated economic loss.

15 (e) ACCIDENTS INVOLVING PERSONS CHOOSING THE
16 PERSONAL INJURY PROTECTION SYSTEM AND PERSONS
17 WHO ARE UNLAWFULLY UNINSURED.—

18 (1) RIGHTS OF PERSONAL INJURY PROTECTION
19 INSUREDS.—A personal injury protection insured
20 who is involved in an accident with an uninsured
21 motorist—

22 (A) shall be compensated under the in-
23 sured person's policy for economic loss without
24 regard to fault; and

1 (B) may recover from the uninsured mo-
 2 torist (other than under uninsured or under-
 3 insured motorist coverage) for economic loss
 4 and for noneconomic loss based on fault.

5 (2) LIMITATIONS ON LAWSUITS BY UNINSURED
 6 MOTORISTS.—An uninsured motorist may not re-
 7 cover from a personal injury protection insured for
 8 noneconomic loss.

9 (f) ACCIDENTS INVOLVING MOTORISTS UNDER THE
 10 INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR IN-
 11 FLICTING INTENTIONAL INJURY.—Notwithstanding any
 12 other provision of this Act, a personal injury protection
 13 insured who is in an accident may—

14 (1) recover all damages based on fault under
 15 applicable State law from a person who—

16 (A) at the time of the accident, was driving
 17 under the influence of alcohol or illegal drugs
 18 (as those terms are defined under applicable
 19 State law); or

20 (B) caused an injury while seeking to in-
 21 tentionally injure another person; and

22 (2) be liable for all damages based on fault
 23 under applicable State law, if such insured—

24 (A) at the time of the accident, was driving
 25 under the influence of alcohol or illegal drugs

1 (as those terms are defined under applicable
2 State law); or

3 (B) caused an injury while seeking to in-
4 tentionally injure another person.

5 (g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—

6 Nothing in this Act shall be construed to affect the tort
7 rights or obligations of any person lawfully uninsured
8 under the terms of an applicable State law for insurance
9 under either the personal injury protection system or tort
10 maintenance system under section 4(a)(1).

11 (h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHI-

12 CLES WITH FEWER THAN FOUR LOAD-BEARING

13 WHEELS.—Nothing in this Act shall be construed to af-

14 fect the tort rights or obligations of a person who occupies

15 a motor vehicle with fewer than 4 load-bearing wheels or

16 an attachment thereto, unless an applicable contract for

17 personal injury protection under which that person is in-

18 sured specifies otherwise. The preceding sentence applies

19 without regard to whether the person is otherwise legally

20 insured for personal injury protection or tort maintenance

21 coverage.

22 (i) FORFEITURE OF FRAUDULENT CLAIMS.—An

23 owner, operator, or occupant of a motor vehicle involved

24 in an accident forfeits the right to make a claim against

25 an insured motorist for economic or noneconomic loss re-

1 sulting from injury incurred by that owner, operator, or
2 occupant if that owner, operator, or occupant knowingly
3 participated in a scheme to obtain insurance payments for
4 any accident that was staged with the intent to commit
5 insurance fraud.

6 (j) PRIORITY OF BENEFITS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), a personal injury protection insured or a
9 tort maintenance insured may recover first party
10 benefits only under the coverage of that insured in
11 effect at the time of the accident.

12 (2) EXCEPTIONS.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), with respect to an accident
15 that occurred while an injured individual was
16 occupying a motor vehicle—

17 (i) furnished by an employer, the pri-
18 mary coverage shall be the coverage appli-
19 cable to the motor vehicle; or

20 (ii) that was being used in the busi-
21 ness of transporting individuals or prop-
22 erty, the primary coverage shall be the cov-
23 erage applicable to that motor vehicle.

24 (B) CERTAIN CLAIMANTS.—A claimant
25 may claim first party benefits in an amount

1 greater than the amounts determined under the
2 limits under the primary insurance coverage de-
3 scribed in clause (i) or (ii) of subparagraph (A),
4 if that claimant would otherwise be able to re-
5 ceive those increased benefits by reason of in-
6 surance coverage of that claimant that would
7 otherwise apply, but for the operation of sub-
8 paragraph (A).

9 (k) REIMBURSEMENT RIGHTS OF PERSONAL INJURY
10 PROTECTION INSURERS AND COLLATERAL SOURCES.—

11 (1) REIMBURSEMENT RIGHTS OF PERSONAL IN-
12 JURY PROTECTION INSURERS.—

13 (A) IN GENERAL.—A personal injury pro-
14 tection insurer may seek reimbursement under
15 subparagraph (B), from—

16 (i) an uninsured motorist who is liable
17 for damages caused by the accident;

18 (ii) a motorist who was under the in-
19 fluence of alcohol or illegal drugs at the
20 time of the accident and whose conduct
21 was the proximate cause of the accident;

22 (iii) a person who caused an injury
23 while seeking to intentionally injure an-
24 other person; or

1 (iv) any other person who is not af-
2 fected by the limitations on tort rights and
3 liabilities under this Act and whose con-
4 duct was the proximate cause of the acci-
5 dent.

6 (B) REIMBURSEMENT.—A personal injury
7 protection insurer may seek reimbursement
8 under this subparagraph to the extent of the
9 obligations of that insurer, with respect to pay-
10 ments made to a personal injury protection in-
11 sured of that insurer for an accident caused in
12 whole or in part, as determined in accordance
13 with applicable State law, from a person re-
14 ferred to in subparagraph (A), for the losses
15 that insurer—

16 (i) has paid or reimbursed; or
17 (ii) under applicable law, is obligated
18 to pay.

19 (2) REIMBURSEMENT RIGHTS OF COLLATERAL
20 SOURCES.—With respect to an accident, a collateral
21 source may seek reimbursement from an insurer in
22 a civil action based on fault.

23 (3) PROHIBITION ON MULTIPLE RECOVERY.—In
24 any action to recover losses arising out of an acci-
25 dent, a person may not recover or introduce into evi-

1 dence in a civil action against another person any
2 amount of a loss that a collateral source or personal
3 injury protection insurer—

4 (A) has paid or reimbursed; or

5 (B) is obligated to pay.

6 (l) CHOICE OF LAW.—

7 (1) APPLICABLE LAW.—With respect to a claim
8 relating to a motor vehicle accident involving persons
9 from different States, the choice-of-law principles
10 applicable under the law of the State of competent
11 jurisdiction shall apply.

12 (2) APPLICABLE COVERAGE IN AN AUTO
13 CHOICE STATE.—With respect to an accident that
14 involves a person from a State in which this Act
15 does not apply and a person from a State in which
16 this Act applies, in any case in which the accident
17 occurs in a State in which this Act applies, the cov-
18 erage of the person from the State in which this Act
19 does not apply shall be deemed to be the form of in-
20 surance system (whether personal injury protection
21 or tort maintenance) that most closely reflects the
22 form of insurance that the person maintains in the
23 State of residence of the person.

1 (m) JURISDICTION.—This Act shall not confer juris-
2 diction on the district courts of the United States under
3 section 1331 or 1337 of title 28, United States Code.

4 (n) STATUTES OF LIMITATIONS.—Nothing in this
5 Act shall supersede an applicable State law that imposes
6 a statute of limitations for claims related to an injury
7 caused by an accident, except that such statute shall be
8 tolled during the period during which any personal injury
9 protection or tort maintenance coverage benefits are paid.

10 (o) LIMITATIONS ON NONRENEWAL, CANCELLATION,
11 AND PREMIUM INCREASES.—An insurer shall not cancel,
12 decline to renew, or increase the premium of a person in-
13 sured by the insurer solely because that insured person
14 or any other injured person made a claim for—

15 (1) personal injury protection benefits; or

16 (2) tort maintenance coverage benefits in any
17 case in which there is no basis for ascribing fault to
18 the insured or one for whom the insured is vicari-
19 ously liable.

20 (p) NEGLIGENT DRIVER RATINGS.—Nothing in this
21 Act shall be construed to limit insurers from canceling,
22 failing to renew, or increasing premiums for an insured
23 person if there is a basis for ascribing moving traffic viola-
24 tions or fault for an accident caused by that insured or

1 any resident relative or dependent, or employee of that in-
2 sured.

3 (q) IMMUNITY.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), no insurer, insurance agent or broker, in-
6 surance producer representing a motor vehicle in-
7 surer, automobile residual market plan, or attorney
8 licensed to practice law within a State, or any em-
9 ployee of any such person or entity, shall be liable
10 in an action for damages on account of—

11 (A) an election of—

12 (i) the tort maintenance system under
13 section 4(a)(1)(B); or

14 (ii) the personal injury protection sys-
15 tem under section 4(a)(1)(A); or

16 (B) a failure to make a required election.

17 (2) EXCEPTION.—Paragraph (1) shall not
18 apply in any case in which—

19 (A) a person described in that para-
20 graph—

21 (i) willfully and intentionally mis-
22 represents the insurance choices available
23 to a customer or client of that person; or

24 (ii) willfully and with the intent to de-
25 fraud, induces the election of one motor ve-

1 hicle insurance system described in para-
2 graph (1)(A) over the other motor vehicle
3 insurance system described in that para-
4 graph; and

5 (B) the misrepresentation or inducement
6 under subparagraph (A) was the proximate
7 cause of that customer or client's electing or
8 failing to make an election of an insurance sys-
9 tem under subparagraph (A) or (B) of section
10 4(a)(1).

11 **SEC. 9. PRESERVATION OF STATE AND PRIVATE RIGHTS.**

12 (a) RIGHTS OF STATES.—Nothing in this Act shall
13 be construed—

14 (1) to waive or affect any defense of sovereign
15 immunity asserted by any State under any law or by
16 the United States;

17 (2) to preempt State choice-of-law rules with re-
18 spect to claims brought by a foreign nation or a cit-
19 izen of a foreign nation;

20 (3) to affect the right of any court to transfer
21 venue, to apply the law of a foreign nation, or to dis-
22 miss a claim of a foreign nation or of a citizen of
23 a foreign nation on the ground of inconvenient
24 forum;

1 (4) to preclude a State from enacting a law
2 that mandates that claims by personal injury protec-
3 tion insureds for uncompensated economic loss be
4 submitted for nonbinding alternative dispute resolu-
5 tion before any action on such claims may be main-
6 tained;

7 (5) to preclude a State from enacting a law
8 mandating that personal injury protection insureds
9 make co-payments of 10 percent for office visits for
10 medical and rehabilitation expenses;

11 (6) to preclude a State from requiring personal
12 injury protection insurers to offer first party insur-
13 ance that establishes a dollar value for noneconomic
14 loss in objectively verifiable defined classes of cases
15 involving death or serious and permanent bodily in-
16 jury;

17 (7) to preclude a State from enacting a law ap-
18 plicable to all motor vehicle accident cases, including
19 cases covered by this Act, to establish a minimum
20 dollar value for economic losses for defined classes
21 of cases involving death or serious bodily injury;

22 (8) to preclude a State from providing that
23 forms of insurance other than those listed in section
24 5(b) shall be subtracted from personal injury protec-

1 tion insurance benefits otherwise payable for injury;
2 or

3 (9) to preclude a State from enacting a law
4 that—

5 (A) allows litigation by tort maintenance
6 insureds against personal injury protection in-
7 sureds for economic and noneconomic loss; and

8 (B) assures through a reallocation device
9 that the advantage of tort claim waivers by per-
10 sonal injury protection insureds against tort
11 maintenance insureds is reflected in the pre-
12 miums of personal injury protection insureds.

13 (b) PRESERVATION OF STATE REGULATORY AU-
14 THORITY.—Nothing in this Act may be construed—

15 (1) to preclude a State or State official charged
16 with regulatory authority over the business of insur-
17 ance from fully exercising that regulatory authority,
18 including adopting regulations and procedures re-
19 garding—

20 (A) rates;

21 (B) policy forms;

22 (C) company solvency;

23 (D) consumer protection;

24 (E) underwriting and marketing practices;

25 and

1 (F) carrying out the requirements of this
2 Act; or

3 (2) to allow or provide for Federal regulation of
4 motor vehicle insurance.

5 (c) RIGHTS OF PRIVATE PARTIES.—Nothing in this
6 Act may be construed—

7 (1) to require a personal injury protection in-
8 surer to offer, or a personal injury protection in-
9 sured to purchase, any coverage for bodily injury in
10 addition to the coverage required under this Act, in-
11 cluding uninsured motorist coverage, underinsured
12 motorist coverage, or coverage for medical payments;

13 (2) to prevent insurers and insureds from con-
14 tracting to limit recovery for the loss of earnings
15 under personal injury protection by—

16 (A) limiting such recovery to only 60 per-
17 cent or more of lost wages or income;

18 (B) limiting the amount of such recovery
19 payable per week; or

20 (C) limiting the period of time after an ac-
21 cident during which the benefits referred to in
22 this paragraph are payable to a period of not
23 less than one year;

24 (3) to prevent an insurer from contracting with
25 personal injury protection insureds to limit the

1 amounts payable for replacement services loss on a
2 per day or per week basis;

3 (4) to prevent insurers from requiring reason-
4 able notice of an accident as a precondition for pay-
5 ment for economic loss;

6 (5) to prevent an insurer from contracting with
7 insureds, as permitted by applicable State law, to
8 have submitted to arbitration any dispute with re-
9 spect to payment of personal injury protection or
10 tort maintenance coverage;

11 (6) to affect the worker classification of a per-
12 son, either as an employee or an independent con-
13 tractor, on the basis of the election of an employer
14 or motor carrier of an insurance system under sec-
15 tion 4(a); or

16 (7) to affect the awarding of punitive damages,
17 or damages for bad faith refusal to pay a claim,
18 under any applicable State law.

19 **SEC. 10. APPLICABILITY TO STATES.**

20 (a) ELECTION OF NONAPPLICABILITY BY STATES.—

21 Subject to subsections (c) through (e), this Act shall apply
22 with respect to a State, unless—

23 (1) by not later than the earlier of the date that
24 is one year after the date of enactment of this Act
25 or the expiration of the first regular legislative ses-

1 sion of the State beginning after the date of enact-
 2 ment of this Act, the State enacts a statute that—

3 (A) cites the authority of this subsection;

4 (B) declares the election of that State that
 5 this Act shall not apply with respect to that
 6 State; and

7 (C) contains no other provision; or

8 (2)(A) the State official charged with jurisdic-
 9 tion over insurance rates for motor vehicles makes a
 10 finding that this Act does not apply by reasons of
 11 the applicability of the conditions described in sub-
 12 section (b)(1)(A); and

13 (B) that finding is made and any review de-
 14 scribed in subsection (b)(1)(B) is completed not
 15 later than the date specified in subsection (b)(1)(C).

16 (b) NONAPPLICABILITY BASED ON STATE FIND-
 17 ING.—

18 (1) IN GENERAL.—This Act shall not apply
 19 with respect to a State, if—

20 (A) the State official charged with jurisdic-
 21 tion over insurance rates for motor vehicles
 22 makes a finding that the statewide average
 23 motor vehicle premiums for bodily injury insur-
 24 ance in effect immediately before the date of
 25 enactment of this Act will not be reduced by an

1 average of at least 30 percent for persons
2 choosing the personal injury protection system,
3 in the amounts required under section 5 (with-
4 out including in the calculation for personal in-
5 jury protection insureds any costs for unin-
6 sured, underinsured, or medical payments cov-
7 erages);

8 (B) the finding described under subpara-
9 graph (A) is supported by evidence adduced in
10 a public hearing and reviewable under the appli-
11 cable State administrative procedure law; and

12 (C) the finding described under subpara-
13 graph (A) is made, and any review of such find-
14 ing under subparagraph (B) is completed, not
15 later than 120 days after the date of enactment
16 of this Act.

17 (2) COMPARISON OF BODILY INJURY PRE-
18 MIUMS.—For purposes of making a comparison
19 under paragraph (1)(A) of premiums for personal
20 injury protection with preexisting premiums for bod-
21 ily injury insurance (in effect immediately before the
22 date of enactment of this Act), the preexisting bodily
23 injury insurance premiums shall include premiums
24 for—

1 (A) bodily injury liability, uninsured and
 2 underinsured motorists' liability, and medical
 3 payments coverage; and

4 (B) if applicable, no-fault benefits under a
 5 no-fault motor vehicle law or add-on law.

6 (c) IMPLEMENTATION PERIOD.—Except as provided
 7 in subsection (d), if a State fails to enact a law by the
 8 applicable date specified in paragraph (1) of subsection
 9 (a) or if a finding described in paragraph (2) of that sub-
 10 section is not made and reviewed by the date specified in
 11 subsection (b)(1)(C), this Act shall apply to that State be-
 12 ginning on the date that is 270 days after the later of
 13 those dates.

14 (d) ACCELERATED APPLICABILITY.—

15 (1) IN GENERAL.—Subject to paragraph (2), a
 16 State may enact a law that provides for the imple-
 17 mentation of the provisions of this Act in that State
 18 before an otherwise applicable date determined
 19 under subsection (a).

20 (2) APPLICABILITY.—If a State makes an elec-
 21 tion under paragraph (1), this Act shall apply to
 22 that State beginning on the date that is 270 days
 23 after the date of such election.

24 (e) ELECTION OF NONAPPLICABILITY BY A STATE
 25 AFTER THIS ACT BECOMES APPLICABLE WITH RESPECT

1 TO THE STATE.—After this Act becomes applicable with
2 respect to a State under subsection (c) or (d), this Act
3 shall cease to apply with respect to that State if the State
4 enacts a statute that meets the requirements of subpara-
5 graphs (A) through (C) of subsection (a)(1).

○